

**EXHIBIT H TO THE JUNE 26, 2008
DECLARATION OF GREGORY I. RASIN, ESQ.**

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1
2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 JANNIE PILGRIM, GIOVANNA HENSON, JESAN

5 SPENCER and BRENDA CURTIS,

6

Plaintiffs,

7

- against - CASE NO.: 07CIV 6618

8

THE McGRAW-HILL COMPANIES, INC.,

9

10 Defendant.

11 -----X

12 DEPOSITION OF BRETT MARSCHKE, taken by
13 Plaintiffs, pursuant to Notice on Friday, April 18,
14 2008, commencing at 9:39 a.m., before Chandra D.
15 Brown, a Registered Professional Reporter and Notary
16 Public within and for the State of New York.

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COPY

1 B. Marschke
2 when -- or I said "if" -- I think I said if it
3 becomes apparent that you're counseling somebody
4 out, that represents the most difficult of
5 circumstances. Even under those circumstances, it's
6 important for us to do it in a way that minimizes
7 disruption in the team.

8 Q It's important to do that in a way so as
9 to appear as though it's done fairly; is that
10 correct?

11 A Well, I think it's important to do that in
12 a way that is, in fact, fair.

13 Q Okay.

14 The "we" in the paragraph is referring to
15 whom?

16 A I think it's just -- a general term that,
17 at a minimum, would include myself and Ken.

18 Q Did there come a time that Jesan Spencer
19 came to you to complain about Ken's behavior as
20 being offensive and inappropriate?

21 A Yes, she did.

22 Q When was that?

23 A I want to say it was the end of -- towards
24 the end of 2005.

25 Q Where were you when she came to you to

1 B. Marschke

2 complain about what she considered inappropriate and
3 offensive conduct?

4 A We were in my office.

5 Q Was anyone else present?

6 A I don't believe so.

7 Q Did you take notes of that conversation?

8 A Yes, I did.

9 Q Do you recall that conversation you had
10 with Jesan Spencer?

11 A Yes, I do.

12 Q Okay.

13 Tell us everything you recall about that
14 conversation.

15 What did she say to you and what did you
16 say to her?

17 A She came to me. She was upset with Ken
18 on, I would say, two fronts; one of which was around
19 him swearing in her presence, and the other was
20 centered more around how he was managing her and the
21 type of work he was assigning to her.

22 So she found the language offensive and,
23 at the same time, as it relates to his work style,
24 she found it -- she found to be somewhat -- at
25 times, micromanaged. At times, she found Ken

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2 perhaps a little abrasive in his style, and she was
3 also concerned that some of the work that she was
4 doing was beneath her.

5 Those were the two issues, broadly
6 speaking, as I recall, that she had reported to me.

7 Q. Let's see if we can narrow it down. I
8 know you explained it as broad issues.

9 Did Ken Caruso micromanage, as you
10 understand it?

11 A I can't be certain of that.

12 Q Was Ken Caruso's style abrasive?

13 A I don't believe it was.

14 Q. Did he give her work that was beneath her?

15 A I am fairly certain that he gave her work
16 that was both fairly meaningful and robust and, like
17 others, I'm sure there were, at times, menial sorts
18 of tasks that may have been beneath her.

19 I don't know if I can --

20 Q I was going to ask you if you knew what
21 that work was that was beneath her?

22 A No. I really ... I can't remember.

23 But a general observation, knowing what we
24 were going through in BusinessWeek, people were
25 being asked to do a lot of different things.

1 B. Marschke

2 Q What were the swearing words that were --
3 that Jesan was complaining about in her presence?

4 A I remember the word "bitch," and the
5 details of this aren't totally clear, but I remember
6 the word "bitch." I seem to recall the word "shit."
7 I seem to even recall the word "fuck."

8 That's what comes back to mind.

9 Q What is it exactly that Jesan Spencer told
10 you about the word "bitch"?

11 A I don't remember. I don't remember the
12 specifics of that conversation, that part of the
13 conversation.

14 Q Did you treat what she was saying to you
15 as her complaining about discriminatory conduct?

16 A Jesan, when she was with me in my office,
17 she made the complaint around the two issues that I
18 mentioned, and she expressed dismay as to why Ken
19 would be doing this.

20 And she -- I can remember her distinctly
21 wondering out loud whether or not some sort of
22 discrimination would be the motive. I don't
23 remember her accusing him of discrimination. I
24 remember her, in essence, saying that, you know,
25 that it could be a distinct possibility.

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2 arrangements. Those sort of things.

3 Q Did she say that her coming in late is the
4 reason why Ken Caruso was using the curse word
5 "bitch"?

6 A I don't recall that, no.

7 Q Did she describe to you the context in
8 which Ken Caruso used the word "bitch"?

9 A I don't remember.

10 Q Was it proper for her to come to complain
11 to you about her supervisor's conduct, which she
12 felt may be discriminatory?

13 A Yes, it was.

14 Q What was your role in taking that
15 complaint, as you saw, it under the EEO policy?

16 A My role was to talk to Jesan; to also talk
17 to Ken; to talk to anybody else who might have some
18 understanding or information about this. And also
19 to get another party involved which, in this case,
20 was Sheila O'Neill.

21 And just to be clear, Sheila O'Neill, as
22 someone who was kind of removed from the reporting
23 lines within our group and, as such, had some level
24 of independence around this.

25 Q Did you talk to Ken about Jesan Spencer's

1 B. Marschke

2 complaint?

3 A I did.

4 Q Did you -- did you tell Ken that Jesan
5 Spencer complained about his using the word "bitch"
6 as being inappropriate and offensive?

7 A I don't remember specifically using the
8 word "bitch."

9 I do remember talking to him about
10 language.

11 Q Did he admit to you that he used the word
12 "bitch"?

13 A I remember him wondering out loud -- I
14 don't remember him recalling specifically, but I do
15 remember him leaving open the possibility that he
16 could have said any number of things.

17 Q Such as?

18 A Swear words: "Bitch, "shit," fuck."

19 Q Could you understand Jesan being upset, as
20 an African-American female, hearing from a Caucasian
21 supervisor his using the word "bitch" in her
22 presence, as being offensive to her?

23 MS. BLOOM: Object to the form of the
24 question.

25 You can answer.

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2 race?

3 A That was the inference, as I recall.

4 Q Okay.

5 Now, did you speak to Ken Caruso about any
6 other employees when you were speaking to him about
7 Jesan Spencer's complaints about race discrimination
8 and the use of the word "bitch"?

9 MS. BLOOM: Objection. Mischaracterizes
10 his testimony. He hasn't testified as to
11 talking to Ken Caruso about race
12 discrimination.

13 Q Why don't we ask you that.

14 Did you talk to Ken about race
15 discrimination?

16 A I talked to Ken as a follow-up to my
17 meeting with Jesan.

18 Q Did you talk to Ken Caruso and discuss
19 race discrimination with him?

20 A I remember talking to Ken -- I remember
21 talking to Ken about the swearing. I remember
22 talking to him about how Jesan was being treated,
23 and I believe I also, again, expressed to him that
24 Jesan had wondered out loud about the notion of
25 discrimination.

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2 Q What did he say in response?

3 A I think he was -- he expressed a certain
4 level of shock and dismay.

5 Q What was his words?

6 A I don't recall his specific words. But
7 his reaction, as I recall it, were, you know, he
8 struggled to kind of think of the circumstances
9 under which he had sworn, but in talking with him,
10 kind of wondered out loud and allowed for the
11 possibility that he could have sworn in the company
12 of Jesan when they were downstairs together.

13 He -- as it relates to kind of the work, I
14 think he expressed some level of understanding that
15 Maylene felt -- I'm sorry, that Jesan felt
16 micromanaged and that some of the tasks were
17 ^quote/unquote beneath her.

18 I think he, at a certain level, understood
19 that, within the context of what I think I described
20 earlier, around the fact that many of them needed to
21 be -- doing menial tasks in order to get the job
22 done.

23 And specifically as it relates to the
24 association of those two things, the work as well as
25 the swearing, being interpreted in any way as

1 B. Marschke
2 discriminatory, I think he was very surprised at
3 that, and, you know, in some ways -- I think he was
4 just surprised. I think that's the best way to
5 describe it.

6 Q Was he apologetic?

7 A I wouldn't say he was apologetic. I think
8 he was very kind of circumspect about it. I think
9 he was kind of just more introspective about it.

10 I think he spent time with me trying to
11 think through what he had actually -- could have
12 done to create kind of -- what could have lead to
13 kind of Jesan's claim.

14 I think he was really, really struggling
15 to kind of think about it. He was very reflective
16 about it.

17 Q How much time did he do that with you?

18 A We were together for about, I want to say,
19 over a half an hour.

20 And if you're asking in particular kind of
21 around, you know, how long was he kind of just
22 thinking about it. I mean, minutes.

23 Q Did you mention any other employees in
24 talking to Ken Caruso about his behavior?

25 A I don't recall. I don't recall.

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2 on their complaints to you?

3 A I spoke with Ken and, to the extent that
4 he recognized that there were errors made -- and
5 what was recognized was the use of profanity in a
6 general sense -- I absolutely reprimanded him around
7 that.

8 Q Did you put that in writing, that you
9 reprimanded him regarding his use of profane
10 language?

11 A I don't remember putting it in writing.

12 Q Did you indicate it in his PMP?

13 A What I was attempting to do in this
14 section of the PMP that we talked about, where I
15 began to describe the need for him to be much more
16 effective in terms of communication with his team
17 and that they needed to be -- feels they are being
18 treated fairly and that they needed to be respected,
19 that and the rating for Ken, who, by all accounts,
20 as you know from reading the evaluation, is a very
21 strong performer, was the area of work where he got
22 his weakest marks.

23 And so, when I was writing that section of
24 the review, that's what I was thinking about.
25 That's what lead me to the overall rating for that

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2 independently.

3 Q Whose idea was it specifically that Jesan
4 Spencer be transferred from BusinessWeek to BIG?

5 A My best recollection was that it was my
6 idea.

7 Q When did you formulate that idea?

8 A I mean, I think the notion of transferring
9 Jesan was something that, over time, had been
10 discussed between, as we talked about earlier,
11 Sheila O'Neill and myself.

12 I think it was some period after that that
13 it became a little more clear that maybe BIG was an
14 alternative.

15 Q But do you know --

16 A That only became clear to me given
17 independent conversations with Bill Harper and the
18 management team around BIG and what their needs
19 were.

20 Q But do you know when you began to have
21 these discussions with Sheila O'Neill and yourself
22 regarding Jesan Spencer being transferred from
23 BusinessWeek to another location, whatever that
24 location was going to be?

25 A I don't. I don't remember.

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2 A No.

3 Q Did Sheila O'Neill describe to you her
4 conversations with Jesan Spencer and whether Jesan
5 Spencer was crying at any time?

6 MS. BLOOM: Object to the form of the
7 question.

8 You can answer.

9 A I don't remember.

10 Q After Jesan Spencer was transferred to
11 BIG, what were her job duties?

12 MS. BLOOM: Object to the form of the
13 question.

14 You can answer.

15 A When Jesan --

16 MR. SOLOTOFF: I just want to get this
17 correct.

18 Q You testified earlier she was transferred
19 to BIG; am I correct?

20 MS. BLOOM: Objection. He testified she
21 transferred.

22 Q Did Jesan Spencer transfer to BIG
23 voluntarily?

24 A Yes.

25 Q What gives you that information?

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2 A I believe that was a conversation that I
3 had had with Sheila O'Neill.

4 Q Sheila O'Neill did not tell you that Jesan
5 Spencer did not want to be transferred to BIG,
6 correct?

7 A Can you repeat the question?

8 Q Sheila O'Neill did not tell you that Jesan
9 Spencer did not want to be transferred to BIG?

10 A No. I don't remember having that
11 conversation with Sheila O'Neill.

12 Q But it is your impression that it was
13 Sheila O'Neill who told you that Jesan Spencer
14 wanted to be transferred to BIG?

15 A My recollection is that Jesan was open to
16 a transfer out of BusinessWeek into another role
17 given, you know, the dynamics between her and Ken.

18 And my understanding was that the BIG
19 assignment was one that was comparable and that
20 there was no issue around it.

21 Q The idea that there was no issue around
22 it, you got that from Sheila O'Neill, correct?

23 A That's my recollection.

24 Q What was Jesan Spencer's job duties at
25 BIG?

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2 A She was working as a generalist in a
3 similar capacity to what she was working at in
4 BusinessWeek.

5 The best of my recollection was that there
6 were a number of business -- a number of units
7 within BIG: Aviation Week, there was a technology
8 group, there may have been one other group as well.

9 It was a -- BIG was a newly formed group.
10 It was a pretty big business. And one of the women
11 who was working in the business, Toi Eaton, was
12 having just difficulty keeping up with everything
13 that was going on within BIG from an H/R
14 perspective.

15 So the role that Jesan would be playing
16 was one of generalist supporting those units working
17 with Toi.

18 Q Who is Toi Eaton?

19 A Toi Eaton is another H/R manager that
20 works in BIG reporting to Bill Harper.

21 Q Was Toi Eaton a director of Human
22 Resources? - - -

23 A I don't recall her title.

24 Q Was it Toi Eaton that supervised Jesan
25 Spencer?

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2 A I can't say for certain.

3 Q Where it says, "My messages to Jesan to
4 improve her performance were ineffective and
5 misinterpreted and ultimately lead to a breakdown in
6 the relationship. I take responsibility for this."

7 Would you, reading this portion of the
8 PMP, understand that language to be coming from
9 Mr. Caruso?

10 A That's how I would interpret it.

11 Q When are end-of-the-year reviews prepared
12 on an annual basis by managers like yourself?

13 A Typically, the process begins towards the
14 end of the calendar year and runs through the --
15 roughly the first couple of months of the following
16 calendar year. And are ultimately -- kind of all
17 the final authorizations and sign-offs are late
18 February, March time frame.

19 Q So, for example, a 2005 PMP evaluation of
20 Mr. Caruso would have begun at the end of December
21 and run to the March date of the next year?

22 A Ken would have begun to prepare
23 self-assessment document towards the end of the
24 year. That process would have begun, and then that
25 would have come to me in the early part of -- in

1 B. Marschke

2 this case, 2006.

3 And then I would have prepared a review
4 subsequent to that.

5 Q When you say, "prepared a review," it
6 would have been your comments?

7 A Yes.

8 Q Then it would be signed, correct?

9 A Yes.

10 Q Typically, who signs the reviews?

11 A The employee signs the review; the
12 manager, in this case, myself -- or in Ken's case,
13 myself, in 2006 --

14 MS. BLOOM: You mean the '05 review?

15 A '05 review in 2006, signed in 2006.

16 Then David Murphy would be the next-level
17 reviewer.

18 Q What would be the reason for David Murphy
19 to sign Ken Caruso's PMP?

20 A That's the way the McGraw-Hill system is
21 designed, that the next-level manager is at least
22 given visibility into the review before finalizing.

23 Q When you say, "next manager," you mean the
24 manager -- the second-level manager above the
25 original employee?

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2 A I want to say July. June/July 2003.

3 Q In other words, you stayed in that
4 position through the merger; is that correct?

5 A Yeah. That's right. Through the first 18
6 months or so of the acquisition.

7 Q After July 2003, were you promoted to
8 another position?

9 A No. I was asked to assume an interim role
10 at McGraw-Hill education.

11 Q What was that role?

12 A It was the head of Human Resources for the
13 education segment.

14 Q Who was your supervisor at that time?

15 A In that role it was David Murphy.

16 Q How long did you remain in that position
17 under David Murphy?

18 A Approximately one year.

19 Q From when to when?

20 A It would have been June of '03, through
21 June, July of '04.

22 Q. Then from July '04, did you assume a new
23 role?

24 A Yes.

25 O What